Supreme Court, U.S.
FILED

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No. _____

In the
Supreme Court of the United States
October Term 2002

ESTRELLITA G. MIGUEL,

Petitioner,

vs.

THE BANK OF NEW YORK TRUSTEE, under the Pooling & Servicing Agreement Series 1995 B; ALLIANCE BANCORP, a corporation; and COUNTRYWIDE FUNDING CORPORATION,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

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SUPPLEMENTAL APPENDIX

GARY VICTOR DUBIN
Dubin Law Offices
Suite 1410
900 Fort Street Mall
Honolulu, Hawaii 96813
Telephone: (808) 537-2300
Facsimile: (808) 523-7733
Counsel for Petitioner

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I. Findings of Fact and Conclusions of Law, filed August 17, 2000

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

ESTRELLITA G. MIGUEL,	)	CV. NO. 97-01593 DAE
	)	
Plaintiff,	)	FINDINGS OF FACT AND
vs.	)	CONCLUSIONS OF LAW
	)	
ALLIANCE BANCORP, et al.,	)	
	)	
	)	*FILED AUGUST 17, 2000*
Defendants.	)	
	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court conducted a bench trial in this action on August 2, 2000. Gary Victor Dubin, Esq., appeared on behalf of Plaintiff; Gary Y. Okuda, Esq., appeared on behalf of Defendant The Bank of New York ("BNY").

BACKGROUND

This case arises from Plaintiff's attempt to rescind her mortgage and mortgage note under the Truth-in-Lending Act, 15 U.S.C. 1601-1693 (1968) ("TILA"), and its accompanying regulations, codified at 12 C.F.R. § 226 (1981) ("Regulation Z") . Plaintiff filed her Complaint on December 1, 1997 against BNY, BNY as trustee, Independent National Mortgage Corp. ("Indy Mac"), Countrywide Funding Corporation ("Countrywide") and Countrywide Home Loans, seeking to enforce her TILA rescission rights, void Countrywide's security interest in her property and to recover statutory damages and attorney's fees based on TILA violations. Then, on June 17, 1998, Plaintiff filed a Second Amended Complaint naming Alliance

Bancorp as a Defendant.

During the past two-and-one-half years of litigation, however, most of the Defendants have been dismissed from the case. First, Indy Mac was dismissed from the case on July 15, 1998. Then, Alliance Bancorp was dismissed on January 13, 1999, because Plaintiff's right to rescind against it was time-barred.

On April 5, 1999, Defendant BNY filed a summary judgment motion and on May 14, 1999, Plaintiff filed its own summary judgment motion. After hearing these motions on June 1, 1999, the court denied both Motions.

The court could not determine at the summary judgment stage whether BNY was timely served with notice of rescission since there were questions of material fact surrounding that determination. Thus, at trial, the court heard testimony from Plaintiff and her husband regarding whether Plaintiff received the proper TILA disclosures at closing. Defendant BNY presented no witnesses at trial.

Having considered the testimony and evidence presented at trial, the stipulations made by the appearing parties, the briefs of counsel, judging the credibility of witnesses and the weight of evidence, and for the reasons set forth below, the court now enters the following Findings of Fact and Conclusions of Law in accordance with its obligations under the Federal Rules of Civil Procedure. Fed. R. Civ. P. 52(c).

FINDINGS OF FACT

1. Estrellita F. Miguel ("Plaintiff"), and her spouse, VIC Garo Miguel, own the subject property ("Property") located at 98-797 Ainanui Loop, Aiea, Hawaii 96701. The couple has owned the Property continuously for the past fourteen years.

2. Plaintiff has held a mortgage solicitor's license since September 25, 1992. However, her undisputed testimony states that she had received no formal TILA training at the time of the closing of the subject mortgage loan, and acted as

a mortgage solicitor.

3. Plaintiff has also been a real estate agent since 1985.

4. In 1994, Plaintiff approached a number of possible brokers, including Citizens Mortgage, to assist her in refinancing her home. Ultimately, Plaintiff chose Citizens Mortgage and it found her a lender, Alliance Bancorp.

5. In or about the beginning of December 1994, the Miguels filled out a Uniform Residential Loan Application and refinanced the Property with Alliance Bancorp, in the principal amount of $532,000. The Prepaid Finance Charge, including the closing costs, equals $12,177.04. Thus, the principal amount less "any finance or other charge" is $519,822.96.

6. According to the Settlement Statement, signed by Plaintiff and her husband, the mortgage loan, together with cash provided by the Miguels in the amount of $23,010.39, paid off their then-existing obligations. Further, its accuracy was affirmed by the Miguels when they signed the HUD-1 Certification.

7. Plaintiff attended the loan closing and the "closer" was also present. There were no other witnesses present at the closing.

8. At the closing on or about December 1, 1994, in conjunction with the promissory note, the Miguels signed and executed a mortgage on the Property as security for the loan.

9. The Miguels also signed several federal TILA financial disclosures on or about December 2, 1994.

10. The Miguels received and signed Escrow Instructions on December 2, 1994.

11. The Miguels received and signed an Addendum to Escrow Instructions, dated December 1, 1994, that provided that a condition of closing was the execution of a "Signed Good Faith, Signed REG/Z, Fair Lending, Authorization Form."

12. The Miguels received and signed a Federal Truth-In-Lending Disclosure Statement. However, Plaintiff's original copy is undated, while Defendant's copy is dated December 2, 1994.

13. Plaintiff received and signed a Notice of Right to Cancel. However, Plaintiff's original copy does not have the operative dates filled in as required by TILA.

14. Plaintiff's testimony at trial states that she never signed or received a properly dated and filled in copy of the Notice of Right to Cancel.

15. Defendant's copy of the Notice of Right to Cancel has both of the Miguel 1st signatures and all the operative dates filled in as required by TILA.

16. Plaintiff's signature on the Notice of Right to Cancel also acknowledges that she received two completed copies of the Notice of Right to Cancel.

17. However, Plaintiff's testimony states that her and her husband were delivered only one undated and incomplete copy of the Notice of Right to Cancel form at the closing of the loan.

18. The One and the Same Name Affidavits were received and signed by the Miguels and notarized on December 2, 1994.

19. The Document Correction Compliance Agreement was received and signed by Plaintiff and notarized on December 2, 1994.

20. The Miguels received and signed the Borrower's Certification and Authorization.

21. The Miguels received and signed an Itemization of. Amount Financed, dated December 2, 1994.

22. The Miguels received and signed the Addendum to the Settlement Statement, dated December 2, 1994.

23. The Miguels received and signed the Loan Servicing Disclosure Statement, dated December 2, 1994.

24. Plaintiff knew at the time of the closing that any statements she made in connection with the loan had to be accurate.

25. The mortgage was properly assigned by Alliance Bancorp to BNY on October 17, 1996.

26. On November 7, 1997, Plaintiff and her husband sent by certified mail, a mortgage cancellation notice to BNY's designated agent.

27. Following the attempted rescission letter, Plaintiff stopped payment on the mortgage loan.

28. Plaintiff has paid a total of $198,629.68 to the original lender and/or Defendant BNY. This number includes her monthly payments of principal and interest, prepayments of principal and interest, closing costs, and the $23,010.39 provided in the Settlement Statement that she gave Alliance Bancorp at the closing to cover the remainder of her then-existing obligations.

29. Following the filing of Plaintiff's lawsuit, in 1998, Defendant brought foreclosure proceedings against the Miguels in the First Circuit Court of Hawaii, CV. No. 98-2749-06, since it did not honor the Miguels' attempted rescission notice.

30. Evaluating the credibility of the Plaintiff witness, the court finds the evidence presented by Plaintiff to be credible.

CONCLUSIONS OF LAW

1. This court has jurisdiction over the action pursuant to 15 U.S.C. §~ 1601 et seq., and 28 U.S.C. § 1331.

2. TILA contains a "buyer's remorse" provision that allows borrowers three business days to rescind, without penalty, a consumer loan that uses a principal dwelling as security. 15 U.S.C. § 1635(a).

3. Regulation Z requires that documents pertaining which the consumer can rescind the loan agreement without penalty. 12 C.F.R. § 226.23(b).

4. 12 C.F.R. § 226.23(b), (emphasis added), states:

> [I]n a transaction subject to rescission, a creditor shall deliver two copies of the notice of the right to rescind to each consumer entitled to rescind. The notice shall be on a separate document that identifies the transaction and shall clearly and conspicuously disclose the following . . . (5) [t]he date the rescission period expires. .

5. If a consumer acknowledges in writing that she received the required TILA disclosures, a rebuttable presumption of delivery is established. 15 U.S.C. § 1635(c).

6. To ensure consumer protection, Congress requires strict enforcement of TILA and Regulation Z, and as a result, "[t]echnical or minor violations of TILA or Reg Z, as well as major violations, impose liability on the creditor and entitle the borrower to rescind." Semar, 791 F.2d at 704; Jackson v. Grant, 890 F.2d 118, 120 (9th Cir. 1989); see also, Huff v. Stewart-Gwinn Furniture Co., 713 F.2d 67, 69 (4th Cir. 1983) (holding that minor violation of TILA or Reg Z impose liability even if the consumer "was not misled and was given meaningful and correct disclosure of crucial credit terms").

7. Regulation Z " 'makes clear that failure to fill in the expiration date of the rescission form is a violation of the TILA,' . . . , without regard to whether the omission was material." Semar, 791 F.2d at 704 (quoting Williamson v. Lafferty, 698 F.2d 767, 768-69 (5th Cir. 1983)).

8. Plaintiff acknowledged in writing, via the signed Notice of Right to Cancel, that the lender delivered and she received two completed copies of the Notice of Right to Cancel.

9. Plaintiff has overcome the rebuttable presumption of proper delivery, however, since her undisputed testimony

establishes that the Notice of Right to Cancel that she signed lacked the specific operative expiration date of her right to rescind without penalty and the lender only delivered and she only received one copy of the Notice of Right to Cancel that omitted the operative dates.

10. The lender, Alliance Bancorp, violated TILA's requirements by failing to inform Plaintiff of the expiration date of the rescission rights and/or deliver two completed copies of the form to Plaintiff.

11. Alliance Bancorp never cured the lack of proper TILA disclosures since it is Plaintiff's undisputed testimony that she never saw the completed Notice of Right to Cancel until the trial.

12. If a lender violates TILA's requirements, the borrower may rescind a consumer loan secured by the borrower's primary dwelling. Semar v. Platte Valley Federal Savings & Loan Association, 791 F.2d 699, 704 (9th Cir. 1986) ; 15 U.S.C. § 1635(a).

13. If proper notice of rescission rights is not delivered to the consumer and the lending institution fails to cure the omission by subsequently providing the proper information, the consumer's rescission rights are extended from within three days to within three years after consummation of the credit transaction. 15 U.S.C. § 1635(f); 12 C.F.R. § 226.23(a) (3).

14. Under Regulation Z, consummation "means the time that a consumer becomes contractually obligated on a credit transaction." 12 C.F.R. § 226.2(a) (13).

15. Since Alliance Bancorp violated TILA's requirements by failing to provide proper notice to Plaintiff of her rescission rights and the credit transaction consummated on December 1, 1994, Plaintiff's rescission rights did not expire until December 1, 1997.

16. A consumer exercises her right to rescind under TILA "by notifying the creditor, . . ., of his intention to do so. 15 U.S.C. § 1635(a) . Further, "any consumer who has the right to rescind a transaction under section 1635 of [TILA]

may rescind the transaction as against any assignee of the obligation." 15 U.S.C. § 1641(c).

17. By sending, via certified mail, a mortgage cancellation notice to the Alliance Bancorp's assignee, Defendant BNY, on November 7, 1997, Plaintiff effectively and timely exercised her right to rescind under TILA since she canceled the transaction prior to December 1, 1997.

18. Consistent with TILA's strict compliance and enforcement, "Congress did not intend for TILA to apply only to sympathetic consumers; Congress designed the law to apply to all consumers, who are inherently at a disadvantage in loan and credit transactions." Semar, 791 F.2d at 705; see also, Jackson, 890 F.2d at 122 (holding that even though Plaintiff received many of the benefits of the agreement that she was rescinding, rescission was proper over two years later since she received no notice of her TILA cancellation right and the expiration date at the time of the consummation of the agreement) .

19. The fact that Plaintiff was a mortgage solicitor and real estate agent at the time of the transaction does not effect the enforcement of the TILA violations and Plaintiff's rescission rights stemming from the lack of proper TILA notifications because the "sophisticated buyer" exception does not apply to TILA, as applied to this case.

20. Upon proper rescission of a mortgage loan, the security interest is dissolved and the borrower must return the loan proceeds to the lender. Semar, 791 F.2d at 705. However, the borrower "is not liable for any finance or other charge," including interest. 15 U.S.C. §§ 1605(a), 1635(b). Thus, the proper formula in determining this figure is to take the loan amount less all charges in the loan agreement. Specifically, a borrower is entitled to have her mortgage loan and underlying security canceled upon payment by the borrower to the lender (or assignee) of the original principal amount less the sum of the original closing costs and all payments made on the loan.

21. Since the mortgage loan was properly rescinded by Plaintiff, the security interest established by the

transaction is hereby dissolved.

22. Further, Plaintiff must return the loan proceeds to the lender, less any finance or other charge. Here, Plaintiff has made payments to the lender and/or Defendant equaling $198,629.68. However, $23,010.39 of the payment was made by Plaintiff to cover her then-existing obligations. Thus, her payments made on the loan agreement itself equal $175,619.29.

23. The original principal amount of the loan less any finance or other charge is $519,822.96. As a result, Plaintiff must make payment to Defendant BNY in the amount of $344,203.67 within 120 days.

24. If a borrower obtains rescission under TILA, the creditor is liable for "a reasonable attorney's fee as determined by the court." Semar, 791 F.2d at 706; 15 U.S.C. § 1640(a)(3).

25. Since Plaintiff properly obtained rescission under TILA, Defendant BNY is liable for Plaintiff's reasonable attorney's fees related to this litigation, to be determined by Magistrate Judge Yamashita at a later hearing.

CONCLUSION

Any findings of fact which should more properly be deemed conclusions of law and any conclusions of law which should more properly be deemed findings of fact shall be so construed.

Pursuant to its findings and conclusions herein, the court hereby orders that judgment be entered in favor of Plaintiff. Having previously dismissed all other claims against all other Defendants, the court hereby directs the entry of judgment for Plaintiff and retains jurisdiction to determine the appropriate amount of attorney's fees and costs.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii; August 17, 2000.

DAVID ALAN EZRA
CHIEF UNITED STATES
DISTRICT JUDGE

II. Judgment in a Civil Action, filed August 22, 2000

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

ESTRELLITA G. MIGUEL,	)	CV. NO. 97-01593 DAE
	)	
Plaintiff,	)	JUDGMENT IN A CIVIL
vs.	)	ACTION
	)	
ALLIANCE BANCORP, et al.,	)	
	)	
	)	*FILED AUGUST 22, 2000*
Defendants.	)	
	)	

This action came to trial before the Court. The issues have been tried and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that pursuant to its findings and conclusions, the court orders that Judgment be entered in favor of Plaintiff. The Court having previously dismissed all other claims against all other defendants, the court hereby directs the entry of judgment for plaintiff.

August 22, 2000 *WALTER A.Y.H. CHINN*
CLERK

III. Order Granting Defendant The Bank of New York Trustee under the Pooling and Servicing Agreement Series 1995 B's Motion To Amend Findings of Fact and Conclusions of Law and To Amend the Judgment, filed October 5, 2000

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

ESTRELLITA G. MIGUEL,	CV. NO. 97-01593 DAE
Plaintiff,	ORDER GRANTING
vs.	DEFENDANT THE BANK
	OF NEW YORK TRUSTEE
ALLIANCE BANCORP, et al.,	UNDER THE POOLING
	AND SERVICING
	AGREEMENT SERIES
Defendants.	1995 B'S MOTION TO
	AMEND FINDINGS OF
	FACT AND
	CONCLUSIONS OF LAW
	AND TO AMEND THE
	JUDGMENT
	FILED OCTOBER 5, 2000

ORDER GRANTING DEFENDANT THE BANK OF NEW YORK TRUSTEE UNDER THE POOLING AND SERVICING AGREEMENT SERIES 1995 B'S MOTION TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW AND TO AMEND THE JUDGMENT

Pursuant to Local Rule 7.2(d), the court finds this matter suitable for disposition without a hearing. After reviewing the motion and the supporting and opposing memoranda, the court GRANTS Defendant The Bank of New York Trustee under the Pooling and Servicing Agreement Series 1995 B's ("Defendant") Motion.

BACKGROUND

On August 22, 2000, the court issued the Findings of Fact and Conclusions of Law and entered judgment in favor of Plaintiff, holding that Defendant, as assignee, is liable for Alliance Bancorp's ("Alliance") TILA violations. Further, the court held that Defendant must rescind the security interest on Plaintiff's home and pay for Plaintiff's attorney's fees and costs. However, the court also held that Plaintiff must return the loan proceeds to Defendant, less any finance or other charge, in the amount of $344,203.67 within 120 days.

Arguing that the rescission of the security interest should be conditioned on the repayment of the loan principal and that Plaintiff is not entitled to attorney's fees since Alliance's violations were not apparent on the disclosure statements, Defendant filed this Motion on September 6, 2000. Plaintiff filed her Opposition on September 19, 2000 and Defendant filed its Reply on October 3, 2000.

STANDARD OF REVIEW

Federal Rule of Civil Procedure 52(b) allows a party to file, within 10 days of the entry of judgment, a motion to amend the court's findings or make additional findings. Upon this motion, a court may amend the judgment to correct manifest errors of law or fact. Fed. R. Civ. P. 52(b); see also, Fontenot v. Mesa Petroleum Co., 791 F.2d 1207, 1220 (5th Cir. 1986) .

DISCUSSION

In its Motion, Defendant argues that the Findings of Fact and Conclusions of Law should be amended to reflect two errors made by the court. First, it contends that the rescission of the security interest in Plaintiff's home should be conditioned on repayment of the loan principal, less finance or other charges. Second, it claims that the court's award of attorney's fees and costs to Plaintiff constitutes an error because the TILA violations were not apparent on the disclosure documents. The court will now consider each issue in turn.

A. Whether Rescission is Conditioned on Plaintiff's Repayment of the Principal

In the Findings of Fact and Conclusions of law, after finding that Plaintiff is entitled to rescission and properly notified Defendant of her intention to rescind, the court held the following:

> 20. Upon proper rescission of a mortgage loan, the security interest is dissolved and. the borrower must return the loan proceeds to the lender. Semar, 791 F.2d at 705. However, the borrower "is not liable for any finance or other charge," including interest. 15 U.S.C. §§ 1605(a), 1635(b). Thus, the proper formula in determining this figure is to take the loan amount less all charges in the loan agreement. Specifically, a borrower is entitled to have her mortgage loan and underlying security canceled upon payment by the borrower to the lender (or assignee) of the original principal amount less the SUM of the original closing costs and all payments made on the loan.
>
> 21. Since the mortgage loan was properly rescinded by Plaintiff, the security interest established by the transaction is hereby dissolved.
>
> 22. Further, Plaintiff must return the loan proceeds to the lender, less any finance or other charge.

Defendant argues that these conclusions constitute error because the court failed to condition rescission upon the return of the outstanding loan principal balance.

Under TILA once a creditor, or assignee, receives the

amount to be rescission notice, it must remove the security interest from the property within twenty days. 15 U.S.C. § 1635(b). However, upon rescission, the borrower must return the loan proceeds, less "any finance or other charge," including interest, to the lender. Semar, 791 F.2d at 705 (citing 15 U.S.C. §§ 1635(b), 1605(a)). Additionally, if the lender's TILA violations are not egregious, it is "appropriate to condition rescission of the mortgage on [a p]laintiffs' tender of repayment." Riopta v. Amresco Residential Mortgage Corporation, 101 F. Supp. 2d 1326, 1335 (D. Haw. 1999)

In this case, it is clear that Defendant's violations were not egregious since they were merely technical violations of TILA. Further, the court intended to condition rescission upon Plaintiff's return of the loan principal, in the amount of $344,203.67, in the initial judgment since it is in the interests of justice. Thus, the court agrees with Defendant and finds that, while Plaintiff is entitled to rescission of the security interest, her ability to rescind is conditioned on her tender of repayment of the loan proceeds, less any finance, closing and interest charges.

Consequently, the court GRANTS Plaintiff's [sic] Motion to the extent it seeks a conditional rescission and AMENDS Conclusion of Law No. 21 to read:

> The court concludes that Plaintiff is entitled to rescission; however, since the TILA violations were not egregious, rescission of the security interest in Plaintiff's property is conditioned on Plaintiff's repayment of the balance of the loan proceeds, less any finance, closing or interest charges. Riopta v. Amresco Residential Mortgage Corporation, 101 F. Supp. 2d 1326, 1335 (D. Haw. 1999). Thus, upon repayment of the loan principal balance, the security interest established by the transaction will be immediately dissolved.

B. Attorney's Fees under Section 1640

Additionally, Plaintiff seeks attorney's fees and costs under 15 U.S.C. § 1640 since Defendant, as assignee, is liable for Alliance's TILA violations. Also, she contends that attorney's fees are appropriate because Defendant violated TILA. by failing to properly rescind the security interest after receiving Plaintiff's notice.

Generally, if plaintiffs are deemed to have a right to rescission, they are also entitled to "the costs of the action, together with a reasonable attorney's fee as determined by the court." 15 U.S.C. § 1640(a) (3). However, section 1641 states that assignees are liable for attorney's fees and costs "if the disclosure violations made by the original lender are 'apparent on the face' of the disclosure documents." Rowland v. Novus Financial Corp., 949 F. Supp. 1447, 1457-58 (D. Haw. 1996).

After reviewing the record and arguments presented, the court concludes that an error is present in the Findings of Fact and Conclusions of Law. Accordingly, the court now holds that Defendant is not liable for TILA damages, as well as attorney's fees and costs, in this case since Alliance's violations were not "apparent on the face" of the disclosure documents. It was not obvious to Defendant when it assumed the role of assignee that the documents were flawed. Rather, Defendant's copy of the Notice of Right to Cancel was a properly executed copy, with no indication that the Miguels did not have the same copy.

Additionally, Plaintiff argues that Defendant also violated TILA itself by not properly rescinding the security interest upon notice of rescission. However, this argument is misplaced since Plaintiff never offered to repay the outstanding principal balance on the loan. Riopta, 101 F. Supp. 2d at 1334-36 (holding that it is proper to condition rescission of a mortgage upon repayment (or tender of repayment) of the loan principal). Thus, the court holds that Defendant is not required to release its security interest in Plaintiff's property until Plaintiff has tendered repayment, less any finance or other charges, in an

determined at a later hearing. Thus, she was never entitled to immediate rescission and Defendant did not violate TILA itself.

As a result, the court GRANTS Plaintiff's [sic] Motion to the extent it covers attorney's fees and costs and AMENDS the Conclusion of Law No. 24 to read:

> If a borrower obtains rescission under TILA the creditor is liable for "a reasonable attorney's fee as determined by the court." Semar, 791 F.2d at 706; 15 U.S.C. § 1640(a) (3). However, section 1641 states that assignees are liable for attorney's tees and costs "if the disclosure violations made by the original lender are 'apparent on the face' of the disclosure documents.". Rowland v. Novus Financial Corp., 949 F. Supp. 1447, 1457-58 (D. Haw. 1996).

Also, the court AMENDS Conclusion of Law No. 25 to read:

> Since Alliance's violations were not apparent on the face of the disclosure documents when Defendant BNY took over as assignee, Defendant BNY is not liable for Plaintiff's reasonable attorney's fees related to this litigation.

CONCLUSION

For the reasons stated above, the court GRANTS Defendant's Motion to Amend Findings of Fact and Conclusions of Law and to Amend the Judgment, as set forth above.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii; October 5, 2000.

DAVID ALAN EZRA
CHIEF UNITED STATES
DISTRICT JUDGE

IV. Judgment in a Civil Action, filed October 12, 2000

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

ESTRELLITA G. MIGUEL,	CV. NO. 97-01593 DAE
Plaintiff,	JUDGMENT IN A CIVIL
vs.	ACTION
ALLIANCE BANCORP, et al.,	
	FILED OCTOBER 12, 2000
Defendants.	

This action came to trial before the Court. The issues have been tried and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that an AMENDED JUDGMENT is entered pursuant to the "Order GRANTING Defendant The Bank of New York Trustee under the Pooling and Servicing Agreement Series 1995 B's Motion To AMEND Findings of Fact and Conclusions of Law and To AMEND the Judgment" filed on October 5, 2000, [sic] the court GRANTS Plaintiff's [sic] Motion to the extent it seeks a conditional rescission and AMENDS Conclusion of Law No. 21 as stated in the "Order" filed on October 5, 2000. IT IS FURTHER ORDERED that the court GRANTS Plaintiff's [sic] Motion to the extent it covers attorney's fees and costs and AMENDS the Conclusion of Law No. 24, [sic] also,

the court AMENDS Conclusion of Law No. 25 as stated in the "Order" filed on October 5, 2000.

October 12, 2000

WALTER A.Y.H. CHINN
CLERK
